

BEFORE THE STATE BOARD OF SOCIAL WORK EXAMINERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:

KENNETH D. HUTCHINSON,
License No. SW-1711,

Respondent.

Case No. SWO-P4B-03-02-84

FINAL ORDER

THIS MATTER came on for hearing on April 16, 2003, before Elaine Eberharter-Maki, the designated Hearing Officer. The State appeared in person and by its attorney of record, Cheri L. Bush, Idaho Deputy Attorney General. Respondent, Kenneth D. Hutchinson, failed to appear at the hearing. The State presented witnesses, testimony, and documentary evidence. On April 30, 2003, the Hearing Officer submitted her Findings of Fact, Conclusions of Law, and Recommended Order.

The Board, having conducted an independent review of the record, having considered all evidence presented before the Hearing Officer, the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order, and all other matters of record, and good cause appearing therefore, the Board unanimously adopted the following Order.

IT IS HEREBY ORDERED as follows:

1. That the Hearing Officer's Findings of Fact and Conclusions of Law are hereby adopted and incorporated herein by reference. The Hearing Officer's Recommended Order on Discipline is adopted and incorporated by reference, except as set forth herein:

FINAL ORDER - 1.

2. Recommended Order Section 1 is hereby amended to provide that Respondent shall be suspended for a period of five (5) years effective upon the issuance date of the Board's Final Order.

3. Recommended Order Section 2.a. shall be amended to provide that Respondent has undergone a drug and alcohol evaluation conducted by a drug and alcohol evaluator certified by the state of Idaho who possesses a college degree.

4. Recommended Order Section 2.b. shall be amended to provide that Respondent provides a recommendation from a professional clinical social worker with a Ph.D. degree that Respondent has been fully rehabilitated from his drug addictions and that Respondent fully understands his ethical responsibilities to clients.

5. Recommended Order Section 2.c. shall be clarified to provide that said training and continuing education shall be in a face-to-face setting between Respondent and the instructor.

6. Recommended Order Section 2.e. shall be amended to include that the Board may set additional conditions during Respondent's probationary period including, but not limited to, random urinalysis and other rehabilitative conduct requirements.

7. Recommended Order Section 3 shall be amended to provide that Respondent is ordered to pay the costs and fees involved in the investigation and prosecution of Respondent in this matter in an amount determined by the Idaho Bureau of Occupational Licenses. That Respondent shall pay said costs and fees within twelve (12) months from the issuance of the Final Order.

8. This is the Final Order of the Board.

FINAL ORDER - 2.

a. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. (See, Idaho Code ' 67-5247(4).)

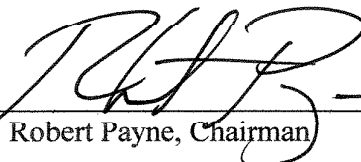
b. Pursuant to Idaho Code ' ' 67-5270 and 57-5272, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; or (iii) the party seeking review of this Final Order resides.

c. An appeal must be taken within twenty-eight (28) days: (i) of the service date of this Final Order; (ii) of any order denying petition for reconsideration; or (iii) of the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. (See, Idaho Code ' 67-5273.) The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

9. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon the Respondent and the State=s attorney by mailing a copy to them at their addresses as provided

DATED this 4th day of ~~July~~ ^{August} ~~2003~~ ^{R.P.}.

STATE BOARD OF SOCIAL WORK
EXAMINERS

By 
Robert Payne, Chairman

FINAL ORDER - 3.

CERTIFICATE OF SERVICE

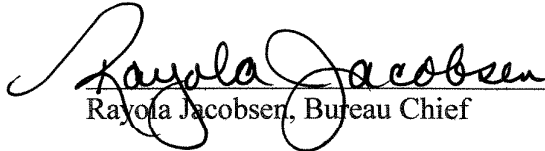
I HEREBY CERTIFY that on the 4th day of August, 2003, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Cheri L. Bush
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☐ U.S. Mail
☐ Hand Delivered
☐ Federal Express
☐ Fax Transmission
☒ Statehouse Mail

Kenneth D. Hutchinson
227 South 550 East
Burley, Idaho 83318

☒ U.S. Mail
☒ Certified Mail
☐ Hand Delivered
☐ Federal Express
☐ Fax Transmission


Rayola Jacobsen, Bureau Chief

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Elaine Eberharter-Maki
Hearing Officer
818 La Cassia Drive
Boise, Idaho 83705
Telephone: (208) 336-8858
Facsimile: (208) 367-1560
Idaho State Bar No. 3322

ORIGINAL

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

STATE OF IDAHO

In the Matter of the License of:)	Case Nos. SWO-P4B-03-02-84
)	
KENNETH D. HUSKINSON,)	
License No. SW-1711,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND RECOMMENDED ORDER
_____)	

The contested case regarding the complaint against Kenneth D. Huskinson, a licensed social worker, License No. SW-1711, in the State of Idaho, duly came on for hearing before the Board of Social Work Examiners on Wednesday, April 16, 2003, at the offices of the Idaho Bureau of Occupational Licenses, located at the Owyhee Plaza, Suite 220, 1109 Main Street, Boise, Idaho. Elaine Eberharter-Maki was the duly appointed hearing officer designated to submit her Findings of Fact, Conclusions of Law, and Recommended Order to the Board of Social Work Examiners. The Respondent, Kenneth D. Huskinson (hereinafter referred to as the "Respondent"), did not appear at the designated time for the hearing. The Board of Social Work Examiners (hereinafter referred to as

“the Board”) was represented by its legal counsel, Cheri L. Bush, Deputy Attorney General. The Respondent and the Board may be hereinafter collectively referred to as the “Parties.”

The issues presented in this contested case are as follows:

1. Whether the Complaint file in this matter contained sufficient cause or grounds that, if proven, warranted disciplinary action by the Board against the social work license of Respondent; and

2. If sufficient cause or grounds were proven, what disciplinary action, if any, would be appropriate.

After considering the Complaint, after having heard and considered the testimony presented on behalf of the Board during the course of the administrative hearing, having reviewed the record of this matter consisting of the Board’s exhibits 1 through 11, and being otherwise fully advised in the premises, the following consists of the Findings of Facts, Conclusions of Law, and Recommended Order.

I.

SUMMARY OF THE PROCEEDINGS

A. Legal Authority of the Board and Statutory Standards for Disciplinary Action Regarding a License.

As set forth in the Social Work Licensing Act (Idaho Code § 54-3201, *et seq.*), the Board is the self-governing agency for the State of Idaho that, among other matters, is responsible to promulgate necessary administrative rules, issue social work licenses to qualified applicants, and to initiate or receive complaints against those individuals holding social work licenses, to investigate complaints against such individuals, and to conduct disciplinary proceedings against such individuals

in the state of Idaho. After notice and an opportunity for hearing, the Board may refuse to issue, refuse to renew, suspend, or revoke a license for cause shown that the individual engaged in unprofessional conduct, as defined in Idaho Code Section 54-3211. In addition, the Board has the authority to refuse to issue, refuse to renew, revoke, or suspend any license pursuant to Idaho Code Section 54-3212. Any person whose license has been revoked may, after the expiration of two (2) years from the date of the revocation, but not before, apply for a new license.

B. The Complaints Against the Respondent.

A complaint dated January 17, 2003, signed by the Chief of the Bureau of Occupational Licenses alleges that Respondent misused his professional relationship with two clients in order to obtain prescription medication for his own use. It is alleged that the allegations against Respondent constituted violations “of the laws and rules governing the practice of social work, specifically Idaho Code §§ 54-3211(1), (2) and (6) and IDAPA 24.14.01.450.g, 24.14.01.450.h, 24.14.01.450.02.b and 24.14.01.450.02.c.”

C. Contested Case Proceedings Under the Idaho Administrative Procedures Act.

The Board is authorized to conduct hearings in furtherance of its licensing function. Idaho Code § 54-3212. The Social Work Licensing Act provides that hearings are to be conducted in accordance with the provisions of the Idaho Administrative Procedures Act (hereinafter referred to as “IDAPA”).

In addition, the Board has adopted the Idaho Rules of Administrative Procedure of the Attorney General as standards for the procedures it employs in conducting contested cases. IDAPA 24.14.01.003. The Board, as the moving party in this proceeding, has the burden of proof.

D. Summary of the Testimony and Evidence Presented at the Administrative Hearing.

At the hearing held on April 16, 2003, the Board presented evidence through the testimony of Penny Ragland, Bureau of Occupational Licenses Investigator. Additionally, eleven exhibits were admitted into evidence:

1. Respondent Statement Form dated 3-20-02
2. Judgment of Conviction dated 8-28-02
3. Respondent's Statement dated 11-21-01
4. Letter to Respondent from Client dated 11-16-01
5. Statement of Dino Castaldi dated 11-27-01
6. Statement of Joan Saario dated 3-15-02
7. Twin Falls Police Dept. Report dated 12-09-00
8. Cathryn Huskinson Statement Form dated 3-27-02
9. Letter from Mary Beth Davis dated 4-10-02
10. Penny Ragland's Notes of Interview with Cathryn Huskinson
11. Ken Huskinson's Letter dated 12-12-02, and Cover Letters dated 2-3-03 and 2-4-03

The Respondent did not appear at the hearing. The hearing began ten minutes late in order to allow Respondent time to arrive. Thus, Respondent did not submit any testimony or exhibits at the hearing.

Ms. Ragland testified regarding her investigation, including the individuals she interviewed and the documentation she received during her investigation.

The evidence presented through the testimony of Ms. Ragland and the documentation admitted into evidence established that in 2001 Respondent was in private practice with his wife,

also a licensed social worker, providing services to various clients, and doing business under the name of Summit Support Services. At the time Respondent was in private practice, he had had a long-term problem with alcohol and drug abuse. (Exhibit 10.) Additionally, the record reflects that Respondent had addiction problems that negatively affected his work in at least one other position he held at the Upper Valley Resource and Counseling Center in Rexburg, Idaho. (Exhibit 10.)

On March 20, 2002, Respondent submitted a signed statement to the Bureau of Occupational Licenses stating that he had misused his professional relationship with two clients. (Exhibit 1.) With regard to Client No. 1, Respondent stated that he had “manipulated” her on at least eight occasions into providing him with her prescription medications, knowing that she would be unable to say “no” to his request.

With regard to Client No. 2, Respondent acknowledged that he also took prescription pain pills from her, and at times, bought her cigarettes in exchange for the prescription medication. Respondent also recognized that Client No. 2 suffered from extreme mood swings, and that “she is capable of doing almost anything directed at herself.” Client No. 2 subsequently sought therapy services from Joan Saario, who indicated Client No. 2 was “suicidal and needed several sessions to calm down regarding this event [with Respondent].” (Exhibit 6.)

Prior to Respondent submitting the signed statement to the Bureau of Occupational Licenses, a criminal investigation was initiated by the City of Burley regarding Respondent’s alleged actions. When questioned by a police officer investigating the matter, who read a statement to him from one of the clients regarding Respondent’s alleged misuse of the professional relationship and the use of the client’s prescription drugs, Respondent’s reply was set forth in his statement dated November 21, 2001, providing that “I have never asked and will never ask a client for their medications. I am the

supervisor & co-owner of Summit Support Services. I never told [D] not to tell anyone about what she was accusing me of. . . .” (Exhibit 3.)

Another police report was submitted and related Respondent’s inappropriate behavior regarding a third client, not Clients No. 1 or No. 2, in December 2000. This report indicated that the police investigating the matter seriously suspected that Respondent was under the influence of drugs when they were interacting with him. (Exhibit 7.)

On August 28, 2002, Respondent pled guilty to two counts of petit theft and received two days of jail time and one year of probation, with the latter six months of probation unsupervised.

Respondent voluntarily closed his private practice, and has not practiced as a social worker since March 2002. To address the issues dealing with Clients No. 1 and No. 2, Respondent indicated that “I have started to do this by attending more AA groups and meeting with a counselor weekly. I am working the 12-Step program, and staying close to my Higher Power.” (Exhibit 1.)

II.

BOARD OF SOCIAL WORK EXAMINERS DISCIPLINARY STANDARDS

The Board was created by the Idaho Legislature as the means by which to “protect the public by setting standards of qualification, education, training and experience, and professional competence for those who engage in the practice of social work.” Idaho Code § 54-3201.

The issue presented in this contested case is whether the complaint filed in this matter contains sufficient cause or grounds that, if proven, warrant disciplinary action by the Board against the social work license of Respondent, and, if so, the nature of that disciplinary action, if any.

III.

FINDINGS OF FACT

1. The Board of Social Work Examiners has jurisdiction in this matter. Respondent is currently licensed as a social worker in the state of Idaho.
2. Respondent has a long-term history of drug abuse.
3. Respondent used his position as a licensed social worker to obtain clients' prescription drugs for his own use.
4. Respondent used his position as a licensed social worker and the established professional trust relationship to manipulate two clients, and to use their vulnerabilities in accessing their prescription drugs for his own use.
5. Respondent pled guilty to petit theft with regard to illegally acquiring prescription drugs from one of his clients.
6. Respondent has voluntarily not practiced in the area of social work since March 2002.

IV.

CONCLUSIONS OF LAW

1. The Idaho Board may refuse to issue, refuse to renew, may suspend, or may revoke any social work license issued in Idaho, or after a hearing, take other disciplinary action, upon proof, that the person has engaged in "unprofessional conduct."
2. The Board has the power to refuse to issue, refuse to renew, revoke, or suspend any license if the holder thereof is shown to have willfully violated any of the rules prescribed by the Board, after a hearing has been held.

3. Respondent's actions have resulted in a violation of the Code of Professional Conduct as follows:

- a. Respondent violated a position of trust by knowingly committing an act detrimental to a client. IDAPA 24.14.01.450.01.g.
- b. Respondent exploited his professional relationship with two clients for his own benefit. IDAPA 24.14.01.450.01.h.
- c. Respondent undertook an activity in which his personal problems were likely to lead to inadequate performance or harm to a client. No evidence was presented that Respondent, once he became aware of his personal problems, sought competent professional assistance to determine whether he should suspend, terminate, or limit the scope of his professional activities. IDAPA 24.14.01.450.02.b.

4. Respondent has violated Idaho Code Section 54-3211(1) in that he has been convicted of an offense involving moral turpitude.

5. Respondent has violated Idaho Code Section 54-3211(2) in that, at the time of the incidences, he had an addiction to habit-forming drugs, which impaired his ability to perform work and placed Client No. 2 in danger, as she had suicidal tendencies because of Respondent's actions.

6. Respondent has violated Idaho Code Section 54-3211(6) in that he has been found guilty of unprofessional conduct and has failed to meet all the rules pertaining to ethical conduct.

V.

RECOMMENDED ORDER

1. It is the Recommended Order to the Board that the license of Respondent as a social worker be suspended for a period of eight (8) years effective upon the issuance date of the Board's Final Order. During this period of suspension, Respondent shall not engage in the practice of social work or hold himself out as a licensed social worker in the state of Idaho.

2. It is further recommended to the Board that upon expiration of the period of suspension, Respondent may apply for reinstatement of his license consistent with IDAPA 24.14,01.250 and Idaho Code Section 67-2614, and upon strict compliance with each of the following conditions:

- a. Respondent has undergone a drug/alcohol evaluation conducted by a drug and alcohol evaluator licensed by the state of Idaho at his own expense, and shall provide to the Board a copy of the evaluation results including any recommendations for education or treatment. Respondent shall successfully comply with all treatment and/or education recommendations of the evaluator and must provide the Board with a letter from the evaluator or licensed treatment professional that he has successfully complied with all recommendations.
- b. Respondent provides a recommendation from his professional counselor that Respondent has been fully rehabilitated from his drug addictions and that Respondent fully understands his ethical responsibilities to clients.
- c. Respondent shall comply with all licensure requirements as set forth in the Idaho Social Work Licensure Act and complete twelve (12) hours of approved Category I social work ethics training in the twelve (12) months immediately prior to his application for reinstatement in addition to eighteen (18) hours of approved Category I social work continuing education during that twelve (12) month period.
- d. All costs and expenses incurred by Respondent associated with the continuing professional education or any other requirement pursuant to the Board's Final Order shall occur at Respondent's own expense.
- e. If the Board reinstates the social worker license of Respondent upon his application, he shall comply with a two (2) year probationary period beginning with the date the reinstated license is issued. Said probation shall require oversight and annual reporting of activities by a licensed social worker, as shall be detailed by the issuing Board.
- f. Any violations of the Idaho Social Work Licensing Act and/or rules or the Final Order of the Board by Respondent shall be reported to the Board immediately for further consideration and possible action.
- g. Respondent's strict compliance with the forgoing conditions shall not create a presumption that his license will be reinstated upon application. Any

violation of the Final Order shall be considered a violation of Idaho Code Section 54-3211.

- h. If the Board staff has reason to believe that Respondent has violated or failed to comply with its Final Order or any subsequent order based thereon, the Board may impose additional discipline following notice and an opportunity for a hearing as required by Idaho Code Section 54-3212.

3. It is further recommended to the Board that Respondent shall make full payment of all administrative expenses, including legal fees, associated with the complaint and suspension proceedings in an amount to be determined by the Board, within twelve (12) months of the issuance of the Final Order.

VI.

APPEAL RIGHTS

Pursuant to Idaho Code Section 67-5244 and IDAPA 04.11.01.720.02:

- a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.
- b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.
- c. Written briefs in support of or taking exception to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final

order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee of the agency head) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

DATED this 30th day of April, 2003.

Elaine Eberharter-Maki
ELAINE EBERHARTER-MAKI, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2003, the original of the within and foregoing document was served by U.S. Mail, postage prepaid, upon:

Idaho State Board of Social Work Examiners
1109 Main Street, Suite 220
Boise, Idaho 83702-5642

and a true and correct copy of the within and foregoing document was served upon the following persons in the manner indicated below:

Cheri L. Bush, Deputy Attorney General
Idaho Attorney General's Office
650 West State Street, Lower Level
P.O. Box 83720
Boise, Idaho 83720-0010

X via U.S. MAIL, POSTAGE PREPAID
_____ via HAND DELIVERY
_____ via FACSIMILE TO 334-2830

Kenneth D. Huskinson
227 South 550 East
Burley, Idaho 83318

X via U.S. MAIL, POSTAGE PREPAID
_____ via OVERNIGHT DELIVERY

Elaine Eberharter-Maki
Elaine Eberharter-Maki